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August 17, 2020

VIA ECF

The Honorable Kimberly C. Priest Johnson
Paul Brown United States Courthouse
7940 Preston Road, Suite 110
Plano, TX 75024

Re: *Butowsky v. Gottlieb et al.*, Case No. 4:19-cv-00180-ALM-KPJ (E.D. Tex.)

Dear Judge Johnson:

The BSF Defendants write to respectfully request clarification regarding the Court's Order (Dkt. 262) denying without prejudice to refile the BSF Defendants' Motion for Sanctions (Dkt. 156), First-to-File Motion to Dismiss (Dkt. 209), and Personal Jurisdiction Motion to Dismiss (Dkt. 210). Specifically, the BSF Defendants request clarification as to whether the Court also intended to or desires to stay the case as between Plaintiff Butowsky and Defendants Michael Gottlieb, Meryl Governski, and Boies Schiller Flexner LLP pending resolution of the anti-suit injunction appeal.

In the absence of clarification regarding a stay of this matter pending resolution of the appeal of the anti-suit injunction, the BSF Defendants are concerned that under the Federal Rules of Civil Procedure, the Court's denial of the motions to dismiss has triggered the BSF Defendants' deadline to answer the operative Complaint, particularly where answering the Complaint would threaten to waive the BSF Defendants' well-founded motions to dismiss based on the absence of personal jurisdiction and based on the first-to-file doctrine. Requiring the BSF Defendants to answer the Complaint would effectively convert the Court's Order into a denial with prejudice.

Further, without a stay, if the BSF Defendants were required to answer, such an answer may include counterclaims and the anti-suit injunction would enjoin Plaintiff from responding to those or moving to dismiss them, if that were Plaintiff's desired course of action. Finally, as the Court notes, even if the case were able to be moved past the pleading stage into discovery, the Court correctly points out that Plaintiff is presently enjoined from prosecuting its case in this forum against the BSF Defendants pending the outcome of the appeal currently in progress.

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As a result, the BSF Defendants respectfully request that the Court clarify or provide guidance regarding whether the case is presently stayed in full pending resolution of the anti-suit injunction appeal, or how the BSF Defendants should proceed, if the case is not so stayed.

Respectfully submitted,

/s/ Paul J. Skiermont

Paul J. Skiermont
Counsel for BSF Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2020, a true and correct copy of the foregoing document was served on all parties of record via the Court's ECF filing system.

/s/ Paul J. Skiermont